IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

RSA.No. 231 of 2007()

AS.33/2007 of DISTRICT COURT, KOTTAYAM
OS.434/1998 of MUNSIFF COURT, VAIKOM
.....

APPELLANT/ APPELLANT/DEFENDANT

ANNA W/O DEVASIA(LATE)AGED 75 YEARS,
CHERUVAM KALAYIL HOUSE, MEMURI KARA,
MANJOOR VILLAGE, VAIKKOM TALUK,
KOTTAYAM DISTRICT.

BY ADV. SRI.R.ANILKUMAR
SMT.RASHMI RAMESH
SMT.RINCY ANTONY

RESPONDENT/RESPONDENT/PLAINTIFF

PAILY JOSEPH,S/O PAILY, AGED 70 YEARS,
THOOMPIL HOUSE, KALLARA KARA,
KALLARA VILLAGE, VAIKKOM TALUK,
KOTTAYAM.

BY //

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 16/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO. 479/07 IN RSA 231/07

DISMISSED

16/3/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

R.S.A .NO. 231 OF 2007

Dated 16th March 2007

J U D G M E N T

Appellant is defendant in O.S.434/98 on the file of Munsiff court, Vaikom. Respondent is the plaintiff. Learned Munsiff granted a decree for recovery of possession and injunction on 28/2/2000. It was an ex-parte decree. Appellant filed first appeal after a delay of six years and 340 days with I.A.No.65/2007 filed under Section 5 of Limitation Act to condone delay. Contention of appellant was that decree was obtained fraudulently and she came to know about the decree only at later stage and she was not given proper legal advice under the influence of respondent and when she approached the counsel at Kottayam on 9/1/2007, she was advised to file an appeal and therefore delay is to be condoned. Respondent opposed the application contending that in the suit appellant had filed a written statement on 4/1/1999 and decree was passed on 28/2/2000 and in the execution petition an objection was also filed by

appellant on 19/3/2005 whereunder it was stated that she is taking steps to set aside the ex-parte decree and therefore there is no reason to condone the delay and in such circumstances, delay cannot be condoned. Learned District Judge on appreciation of available evidence held that there is no sufficient cause to condone the delay and dismissed the application. Consequently, appeal was also dismissed. Second appeal is filed challenging the dismissal of the appeal.

2. Learned counsel appearing for appellant was heard. Arguments of learned counsel appearing for appellant was that learned Munsiff did not consider the evidence properly and did not frame issues, though suit was decreed and learned District Judge did not consider that ground for condoning delay in the proper perspective and should have condoned delay in the interest of justice. It was argued that appellant was mislead by respondent and her counsel did not give sufficient advice and in such circumstances, application to condone delay should have been allowed by learned District Judge and appeal should have been disposed on merit.

3. On hearing learned counsel appearing for appellant, I do not find any substantial question of

law involved in the appeal. Even according to appellant ex-parte decree was passed on 28/2/2000. Appellant had appeared in the suit and had filed a written statement through a counsel. The ex-parte decree was passed on 28/2/2000. An execution petition was filed by respondent. Appellant appeared before the executing court and filed an objection on 19/3/2005. It was stated by appellant in the objection filed before executing court that she is taking steps to set aside the ex-parte decree. As rightly found by District Judge at least on 19/3/2005 appellant received proper legal advice and she was advised to file an application under Order IX Rule 13 of Code of Civil Procedure to set aside the ex-parte decree. Appellant did not file application either under Order IX Rule 13 of the Code of Civil Procedure or appeal immediately thereafter. Appeal was filed in January 2007 contending that she got proper advice only on 9/1/2007. As rightly found by courts below when appellant was made aware of the ex-parte decree and the necessity to get the ex-parte decree set aside at least on 19/3/2005, there is no explanation for non filing of appeal from 19/3/2005 to 19/1/2007. In such circumstances, I find no reason to interfere with the order of learned District Judge

dismissing application to condone the inordinate delay of more than six years or the consequential dismissal of appeal.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.